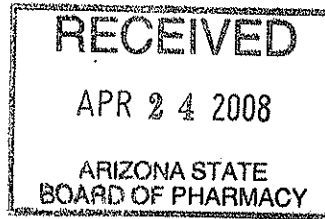


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8
9 **BEFORE THE ARIZONA STATE BOARD OF PHARMACY**

10 In the Matter of

11 **JOSEPH CHEN,**

12 Holder of License No. 7891
As a Pharmacist
13 In the State of Arizona

Board Case No. 08-0039-PHR

**CONSENT AGREEMENT
FOR CIVIL PENALTY AND
PROBATION**

14
15 **RECITALS**

16 In the interest of a prompt and judicious settlement of this case, consistent with the
17 public interest, statutory requirements and the responsibilities of the Arizona State Board
18 of Pharmacy ("Board") under A.R.S. § 32-1901, *et. seq.*, Joseph Chen ("Respondent"),
19 holder of Pharmacist License Number 7891 in the State of Arizona, and the Board enter
20 into the following Recitals, Findings of Fact, Conclusions of Law and Order ("Consent
21 Agreement") as a final disposition of this matter.

22 1. Respondent has read and understands this Consent Agreement and has had
23 the opportunity to discuss this Consent Agreement with an attorney, or has waived the
24 opportunity to discuss this Consent Agreement with an attorney.
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1 2. Respondent understands that he has a right to a public administrative
2 hearing concerning the above-captioned matter, at which hearing he could present
3 evidence and cross examine witnesses. By entering into this Consent Agreement,
4 Respondent knowingly and voluntarily relinquishes all right to such an administrative
5 hearing, as well as rights of rehearing, review, reconsideration, appeal, judicial review or
6 any other administrative and/or judicial action, concerning the matters set forth herein.

7 3. Respondent affirmatively agrees that this Consent Agreement shall be
8 irrevocable.

9 4. Respondent understands that this Consent Agreement or any part of the
10 agreement may be considered in any future disciplinary action by the Board against him.

11 5. Respondent understands this Consent Agreement deals with Board
12 Complaint No. 3477 involving allegations of unprofessional conduct against Respondent.
13 The investigation into these allegations against Respondent shall be concluded upon the
14 Board's adoption of this Consent Agreement.

15 6. Respondent understands that this Consent Agreement does not constitute a
16 dismissal or resolution of any other matters currently pending before the Board, if any,
17 and does not constitute any waiver, express or implied, of the Board's statutory authority
18 or jurisdiction regarding any other pending or future investigation, action or proceeding.

19 7. Respondent also understands that acceptance of this Consent Agreement
20 does not preclude any other agency, subdivision, or officer of this State from instituting
21 any other civil or criminal proceedings with respect to the conduct that is the subject of
22 this Consent Agreement.

23 8. Respondent acknowledges and agrees that, upon signing this Consent
24 Agreement and returning this document to the Board's Executive Director, he may not
25 revoke his acceptance of the Consent Agreement or make any modifications to the
26

1 document regardless of whether the Consent Agreement has been signed by the
2 Executive Director. Any modification to this original document is ineffective and void
3 unless mutually agreed by the parties in writing.

4 9. Respondent understands that the Consent Agreement shall not become
5 effective unless and until adopted by the Board and signed by its Executive Director.

6 10. If a court of competent jurisdiction rules that any part of this Consent
7 Agreement is void or otherwise unenforceable, the remainder of the Consent Agreement
8 shall remain in full force and effect.

9 11. Respondent understands and agrees that if the Board does not adopt this
10 Consent Agreement, he will not assert as a defense that the Board's consideration of this
11 Consent Agreement constitutes bias, prejudice, prejudgment or other similar defenses.

12 12. Respondent understands that this Consent Agreement is a public record that
13 may be publicly disseminated as a formal action of the Board and may be reported as
14 required by law to the National Practitioner Data Bank and the Healthcare Integrity and
15 Protection Data Bank.

16 13. Respondent understands that any violation of this Consent Agreement
17 constitutes unprofessional conduct and may result in disciplinary action. A.R.S. §§ 32-
18 1901.01(B)(20), -1927(A)(1).

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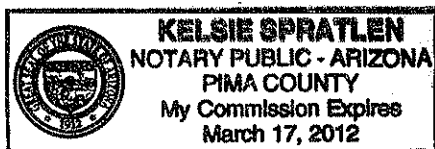
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1 ACCEPTED AND AGREED BY RESPONDENT

2
3 
4 Joseph Chen

Dated: 4/21/08

5 Subscribed and sworn to before me in the County of Pima, State of Arizona,
6 this 21 day of April, 2008, by Joseph Chen.




NOTARY PUBLIC

My Commission expires: 03-17-2012

FINDINGS OF FACT

- 10 1. The Board is the duly constituted authority for licensing and regulating the
11 practice of pharmacy in the State of Arizona.
12
13 2. Respondent is the holder of license number 7891 to practice as a pharmacist
14 in the State of Arizona.
15
16 3. During all times relevant to these findings, Respondent was the pharmacist
17 in charge at Clinic Pharmacy permit #1713 (the "Pharmacy") in Tucson, Arizona.
18
19 4. On January 2, 2008, the Board's compliance officer inspected the
Pharmacy. The compliance officer found the following out of date items were found:

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| Butylated Hydroxytoluene | Expired 8/25/04 |
| Menthol | Expired 1/15/05 |
| 2X Capsules Posilok #1 Blue/Blue | Expired 10/03 |
| Rx# 987617 Eucerin/Phenol/Meth .25%/.5% | Expired 7/05 |
| Ketamine | Expired 11/30/05 |

| | | |
|----|----------------------------------|------------------|
| 1 | Rx# 1003221 Nystatin Pwd 100GM | Expired 10/06 |
| 2 | Capsules Posilok #1 Clear/Clear | Expired 8/05 |
| 3 | Gelatin | Expired 10/07 |
| 4 | L-Tryptophan Pwd | Expired 3/05 |
| 5 | Estriol 1.5 mg caps | Expired 6/3/00 |
| 6 | Rice Starch | Expired 12/31/06 |
| 7 | Metronidazole Benzonate | Expired 7/31/07 |
| 8 | Hydrocortisone Crm. | Expired 3/03 |
| 9 | Vitamin E Crm. | Expired 4/03 |
| 10 | Nystatin Tabs | Expired 3/01 |
| 11 | Rice Starch | Expired 3/15/04 |
| 12 | Flurazepam 15 mg | Expired 8/07 |
| 13 | Arthrotec 50 | Expired 8/07 |
| 14 | Diflorasone Diacetate Oint. .05% | Expired 9/07 |
| 15 | 3X Diphenhydromine 5 mg | Expired 10/07 |
| 16 | Amaryl 4 mg | Expired 11/07 |
| 17 | Glycerin Suppositories | Expired 10/06 |
| 18 | 2X Itraconazole 100 mg | Expired 11/07 |
| 19 | Cytomel 50 mg | Expired 7/07 |
| 20 | Phentermine 30 mg | Expired 10/07 |
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1 Fluvoxamine 100 mg

Expired 7/07

2
3 5. Respondent failed to keep up with pulling out of date items both in the
4 conventional medication area and the compounding area. During the inspection,
5 Respondent stated to the Board's compliance officer that the Pharmacy was too busy to
6 pay much attention to expiration dates when compounding.
7

8 **CONCLUSIONS OF LAW**

9 1. The Board possesses jurisdiction over the subject matter and over
10 Respondent pursuant to A.R.S. § 32-1901 *et seq.*

11 2. The Board may discipline a pharmacist who has engaged in unprofessional
12 conduct. A.R.S. § 32-1927(A)(1).

13 3. The conduct and circumstances described above constitutes unprofessional
14 conduct pursuant to A.R.S. § 32-1901.01(B)(2) (Violating any federal or state law, rule or
15 regulation relating to the manufacture or distribution of drugs and devices or the practice
16 of pharmacy).

17 4. The conduct and circumstances described above constitute unprofessional
18 conduct pursuant to A.R.S. § 32-1901.01(B)(10) (Violating a federal or state law or
19 administrative rule relating to marijuana, prescription-only drugs, narcotics, dangerous
20 drugs, controlled substances or precursor chemicals when determined by the board or by
21 conviction in a federal or state court).

22 5. The conduct described above violated Arizona Administrative Code R4-23-
23 611(B)(3)(a) (A pharmacist-in-charge shall ensure that policies and procedures are
24
25
26

1 developed, implemented and complied with the prevent the sale or use of a drug or
2 chemical that exceeds the expiration date).

3 **ORDER**

4 Based upon the above Findings of Fact and Conclusions of Law, IT IS HEREBY
5 ORDERED THAT:

6 1. Respondent shall pay a civil penalty of \$1,000 for each of the 26 expired
7 items listed in the Findings of Fact. The civil penalty, in the total amount of **\$26,000**,
8 shall be paid as follows:

9 (a) Respondent's first payment of \$6,500 is due within ninety (90) days of
10 the effective date of this Order;

11 (b) Respondent's second payment of \$6,500 is due on or before November
12 15, 2008;

13 (c) Respondent's third payment of \$6,500 is due on or before February 15,
14 2009; and

15 (d) Respondent's final payment of \$6,500 is due on or before May 15,
16 2009.

17 2. Beginning on the effective date of this Consent Agreement, Respondent's
18 Pharmacist License No. 7891 is placed on probation for a period of one (1) year.

19 3. On or before July 2, 2008, the Board shall conduct an inspection of the
20 Pharmacy at Respondent's expense.

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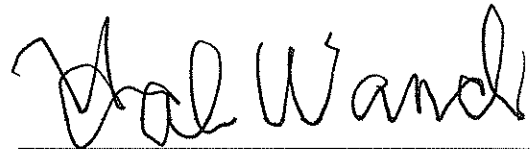
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1 DATED this 15th day of May, 2008.

3 ARIZONA STATE BOARD OF PHARMACY

4 (Seal)

6 By:



HAL WAND, R.Ph.
Executive Director

8 ORIGINAL OF THE FORGOING FILED
9 this 15 day of May, 2008, with:

10 Arizona State Board of Pharmacy
11 1700 West Washington, Suite 250
Phoenix, Arizona 85007

12 EXECUTED COPY OF THE FOREGOING MAILED
13 BY CERTIFIED MAIL

this 15 day of May, 2008, to:

14 Joseph Chen
15 8655 E. Rockcliff Road
Tucson, Arizona 85715
Respondent

16 EXECUTED COPY OF THE FOREGOING MAILED
17 this 15 day of May, 2008, to:

18 Elizabeth A. Campbell
19 Assistant Attorney General
1275 W. Washington Street, CIV/LES
Phoenix, Arizona 85007
20 Attorneys for the State of Arizona



22 #177309